October Term, 1978

No. 65

[redacted]

v.

[redacted]

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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IN THE

Supreme Court of the United States

October Term, 1970

No. 65

KEVIN L. DONALDSON, f/k/a
MERTON H. SWEET, *Petitioner*

v.

UNITED STATES et al., *Respondents.*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

The Petitioner's principal arguments are set forth in full in the opening Brief. This Reply Brief will then be limited to responding to points raised by Respondents which either misconstrue or erroneously interpret the basic propositions relied upon by Petitioner in support of his position.

Reply to Respondent's Argument

The Government would now have this Court believe that the issues of "taxpayer intervention" and "improper criminal purpose" are separate questions,[1] whereas in fact these issues are interdependent. The Court of Appeals denied Petitioner intervention *because* no improper purpose existed.[2] Therefore this Court *must* consider the improper purpose issue in determining "taxpayer intervention" unless it rejects the entire rationale of the Court of Appeals.

I.

The Taxpayer is Entitled to Intervene in Third Party Summons Enforcement Proceedings

Petitioner Has a Right To Intervene Under Rule 24(a)

The United States cannot and does not seriously argue that Petitioner fails to meet each and every requirement of Rule 24(a).[3] It is undisputed that the subject matter of

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[1]The United States asserts at pp. 24-25 of its brief that a determination of *taxpayer intervention* is a condition precedent to this Court's consideration of the impropriety of Section 7602 administrative summonses in criminal investigations. See also Brief for the Respondent in Opposition to the Petition for Certiorari in *Kyriaco v. United States*, at p. 4, No. 448, October Term, 1970 "* * * The 'criminal purpose' issue will be reached in *Donaldson* only if *that petitioner* convinces this Court that the court of appeals erred in denying him intervention * * *."

This present position is clearly inconsistent with its unqualified statement at p. 7 of the Memorandum in Response to the Petition for Certiorari, i.e., the improper criminal purpose issue "would appear to be embraced in a grant of certiorari to review the right of Petitioner to intervene in this case."

[2]"There being no right which the appellant asserts that he could present to warrant the trial court's refusal to enforce the subpoena, the right to intervene has not been established." (A. 52)

[3]Government Brief at p. 15.

the Internal Revenue Service investigation is the Petitioner's liabilities under the Internal Revenue laws[4] and that his rights may be substantially impaired by improper or illegal investigative procedures. Further there is no doubt that Petitioner's interests are not adequately represented by the third parties upon whom summonses were served[5]. Rather the Government asserts that Rule 24(a) should not be applied with full vigor to the present case, citing the priviso to Rule 81(a) (3) and asserting that Petitioner's right to intervene

> must be balanced against the desirability of permitting the Secretary of the Treasury to conduct investigations in furtherance of his duty to enforce the Internal Revenue laws without becoming hopelessly ensnarled in litigation over the scope of his investigatory authority. [Government Brief at p. 15]

Stripped of euphemisms, this proposition is simply an assertion that the Service must be permitted to conduct whatever investigations it deems appropriate, by whatever means it thinks legitimate, without meaningful judicial supervision. Petitioner readily agrees that the Secretary of the Treasury must enforce the laws, but he contends that the Secretary should do so lawfully. The decisions of this Court in *Reisman v. Caplin,* 375 U.S. 440 (1964) and *United States v. Powell,* 379 U.S. 48 (1964), made it clear that enforcement of Section 7602 summonses must be subject to careful court scrutiny. The Secretary's laudatory desire to enforce the substantive tax laws provides no excuse for permitting him to dispense with Petitioner's right to intervene under Rule 24(a) and the doctrine of *Reisman v. Caplin, supra.*

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[4]See Summons, A. 9.

[5]Petitioner's Opening Brief at p. 14, fn. 7.

The Right To Intervene Does Not Depend On A Property Or Privilege Interest In The Summoned Material.

Contrary to the contention of the Government, a taxpayer is entitled to intervene regardless of whether he has a property or privilege interest in the summoned papers.[6] This Court so ruled in *Reisman*[7]. What is in issue in an enforcement proceeding is not the ownership of the summoned documents or the admissibility of summoned evidence at some possible later trial, but the propriety and legality of the investigative procedures being employed by the Government. When a summons has been served on a third party, however, there will be no meaningful test of its validity unless the real party in interest, the taxpayer under investigation, is permitted to intervene.

The Government perceives that the real purpose of a taxpayer's challenge of a Section 7602 summons is to protest unlawful investigative methods [Government Brief, p. 21]. It then argues, quite extraordinarily, that since the same information could be obtained by other means which may be permissible, Petitioner's objections to the present procedures should not be entertained.

Petitioner submits that the Congressional authority recently given to Special Agents under Section 7608(b) of the Internal Revenue Code of 1954[8] to execute and serve

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[6]Petitioner's Opening Brief, pp. 19-21.

[7]The Government persists in reading *Reisman* as if this Court's rulings were limited to what the Government regards as the facts of the case. First, the nature and breadth of this Court's opinion makes it clear that it was addressing itself to the procedures to be followed in *all* summons cases. Second, the only findings of fact in *Reisman*, those of the District Court, explicitly refute that the taxpayer there had any property or privilege interest in the materials summoned. 375 U.S. at 442.

[8]Printed at page 16 *infra*.

both search and arrest warrants and to make arrests was intended to rectify the inherent lack of authority to utilize summons power under Section 7602. Since the Government can investigate Petitioner by lawful means it should do so.

Suppression Is Not An Adequate Substitute For Intervention

The United States argues that at this stage of the proceedings, where Petitioner has not been indicted and is not on trial, it is premature to consider the legality and propriety of the investigation. [Government Brief at pp. 21-22] This proposition is supported by an assertion that, should Petitioner be indicted and prosecuted, he may suppress evidence illegally obtained.

Judge Jerome Frank fully rebutted this contention in *In re Fried,* 161 F. 2d 453 (CA 2, 1947).[9]

Further, by carefully delineating procedures according to which a taxpayer or summoned party may trigger enforcement proceedings in a District Court and there present objections to the summons, this Court's decision in *Reisman* clearly rejected any suggestion that suppression alone was an adequate remedy. Similarly, the Fifth Circuit itself has recognized that pre-compliance, judicial

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[9] "The Government further argues that an indictment founded upon such illicit evidence will do the applicant no harm, since such evidence will not be admitted at the trial which follows the indictment. That is an astonishingly callous argument which ignores the obvious. For a wrongful indictment is no laughing matter; often it works a grievous, irreparable injury to the person indicted. The stigma cannot be easily erased. * * * Prosecutors have an immense discretion in instituting criminal proceedings which may lastingly besmirch reputations. That discretion is almost completely unfettered. It should surely not extend so far as to preclude judicial interference with a prosecutor's aim to induce an indictment by offering to a grand jury evidence which is the product of illegal acts of Federal officers." 161 F. 2d at 458, 459.

scrutiny is essential to the legal validity of the Internal Revenue Service summons procedure. *United States v. Roundtree,* 420 F. 2d 845, 855 (1969).

The suppression of improperly obtained evidence is a drastic and crude remedy which, by its very nature, cannot be used to cure all defects in the investigative process. Therefore, to conclude that taxpayers are not entitled to intervene would be tantamount to allowing the Government to conduct investigations by potentially illegal means without the possibility of correcting such defects and improprieties.

Taxpayer Intervention Does Not Disrupt or Delay Internal Revenue Service Investigations

The Government asserts at pages 23-24 of its Brief, that Petitioner ought to be denied any opportunity to intervene and test the legality of Section 7602 summonses because, in the present state of the law, tax investigations are being substantially delayed and hampered by the extensive litigation which commonly surrounds them. Petitioner rejects this assertion, for the current delays are attributable to the uncertainty of the rights of taxpayers being investigated by the Intelligence Division, not to the opportunity to raise legitimate objections.

It is true that federal courts across the country are currently filled with cases raising many aspects of the general question of the propriety and legality of the Revenue Service practice of conducting criminal investigations under the guise of the civil investigative authority conferred by Section 7602. Indeed, as the Government has admitted, virtually the *only* use currently made of the summons power conferred by Section 7602 is to further

full-scale criminal investigations conducted by the Intelligence Division. [Brief for the Government, p. 28, n. 11.]

Petitioner submits that what is called for is not the drastic curtailment of taxpayer rights suggested by the Government, but rather a clarification of the law. It must be made clear that any taxpayer under investigation, because he is the only and real party in interest, is entitled to intervene in enforcement proceedings in order to test the legality of Section 7602 summonses. Further, it must be made clear that the civil investigative powers conferred by Section 7602 cannot be employed for the sole or principal purpose of investigating crime. Once the law is clarified, there will no longer be delays, and the Internal Revenue Service will be able to conduct all legitimate investigations authorized by Section 7602.

II.

A Section 7602 Summons Cannot be Used for the Improper Purpose of Establishing a Prosecutable Criminal Case

Special Agents Are Not "Unavoidably Involved" In the Civil Purposes For Which Section 7602 Permits Investigations

The unmistakable import of the language in Section 7602 is directed solely towards the investigation, determination and collection of civil tax liabilities. Nothing in its wording refers to the enforcement of criminal tax laws or to investigations undertaken in order to discover or prove that such laws have been violated.[10] The

[10]Patently, the "liability" which may be investigated under Section 7602 does not include criminal "liability" but rather only a "collectable" — *i.e.* monetary — liability.

Government, however, argues that Special Agents, such as the ones investigating Petitioner, pursue the wholly civil purposes for which investigations under Section 7602 are authorized.

A cursory examination of the respective functions of the Agents of the Internal Revenue Service reveals the fallacy of the proposition advanced by the United States. The Intelligence Division is responsible for the investigation and detection of criminal frauds upon the Revenue;[11] whereas, the Audit Division is charged with the determination of civil tax liability.[12] The description given by the Service itself of the duties of a Special Agent refute the Government's contention. The Service specifically denominates Special Agents as "criminal investigators." The duties and responsibilities of a Special Agent are to conduct *tax evasion investigations* and to perform other related duties, such as testifying as a Government witness and assisting the United States Attorney during the preparation or trial of a criminal tax case.[13] No part of the function of a Special Agent, as described officially by the Government, involves civil tax work, all of which is performed by Revenue Agents.[14] In particular, it should be noted that whenever and as soon as a Revenue Agent finds definite indications of fraud or criminal potential, he must refer the case to the Intelligence Division. *Mathis v. United States,* 391 U.S. 1, 6 n. 2 (1968) (White, J., dissenting.) To the ex-

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[11]Internal Revenue Service Statement of Organization and Functions, §1118.6, 35 Fed. Reg. 2417, 2454 (1970).

[12]Internal Revenue Service Statement of Organization and Functions, §1113.53, 35 Fed. Reg. 2417, 2422 (1970).

[13]GSA job description, SPD No. 335, July 3, 1962, printed at page 17 *infra.*

[14]GSA job description, SPD No. 226, January 6, 1960, printed at page 19 *infra.*

tent that a Special Agent may incidentally determine that some tax is owing, that determination does not represent the Service's position with respect to any possible civil deficiency.[15] Further, in financially complex cases Revenue Agents are assigned to help Special Agents understand the tax aspects of their criminal investigation, and it is these Revenue Agents, not the Special Agents, who complete the audit portion of the case.[16] In short, there is no substance to the Government's allegation that Special Agents conduct civil as well as criminal investigations.

Legislative History Does Not Support the Government

The Government has argued that even if the language of Section 7602 does not indicate that it may be used for criminal investigations, the legislative history of the provision indicates that Congress intended such a use. [Government Brief, pp. 29-35] The argument appears to be that Section 7602 of the 1954 Code can be traced back to both Section 3614 and Section 3615(a)-(c) of the 1939 Code, and that since the latter section arguably indicates that criminal investigations may be conducted pursuant to its provisions, a similar power inheres in Section 7602.

This argument must rest wholly on the language and context of Section 3615(a)-(c), for the language of Section 3614 is similar to that of Section 7602. The Solicitor General appears to have *linked* Section 7602 to Section 3615(a)-(c) solely on the authority of Table II

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[15]Burns, "Searches and Seizures: The Suppression of Evidence," 20 N.Y.U. Inst. on Fed. Tax. 1081, 1081-1089 (1962).

[16]Id. at 1089, and GSA job description, infra, p. 20.

to the 1954 Code. However, the Table does not *link* the two sections. Congress prefaced that Table with this statement:

> The following tables have been prepared as *aids in comparing* provisions of the Internal Revenue Code of 1954 with provisions of the Internal Revenue Code of 1939. *No inference, implication, or presumption of legislative construction or intent shall be drawn or made by reason of such tables.*
>
> [Emphasis added. Internal Revenue Code of 1954, United States Code and Administrative News, p. 1013, 68A Stat. 931.]

Incidental Civil Aspects Do Not Legitimize An Investigation Whose Principal Purpose Is Criminal

The United States urges that because the existence of a tax deficiency is a necessary element of a criminal case, it follows that determination of tax liability is an essential purpose of every criminal tax investigation. The basic fallacy in the Government's "purpose" argument can be demonstrated best by comparing tax evasion investigations with investigations to uncover embezzlement of Federally insured funds. It could not be seriously contended that a Federal Bureau of Investigation Agent has a "civil purpose" simply because he must determine the amount of money embezzled.

Secondly, the Government's stress on the alleged dual purpose of a Special Agent's investigation, and the argument that no assessment can be made of the relative weight of the civil and criminal purposes prior to a recommendation for prosecution, is rebutted by the recent

resort to search warrants in *United States v. Premises, 810 N. Seventh St.*, 310 F. Supp. 1316 (S.D. Ill. 1970), *on appeal* 7th Cir., No. 18,487; and *United States v. Premises, 7260 S.W. 131 St., etc.*, Commissioner's Dkt. No. 6, Case Nos. 69-308 and 69-309, S.D. Fla. Clearly, an overriding criminal purpose is essential to the issuance of a search warrant. Inasmuch as the investigations in the cited cases were initiated by search warrants, it is apparent that the Service was able to make a meaningful distinction between "civil" and "criminal" purpose long before a recommendation to the Department of Justice.[17]

Finally, even if it were the case that some Section 7602 investigations conducted by Special Agents are justified because those agents must determine that taxes are owing in order to prove a criminal violation, this justification would not apply to the investigation of Petitioner. The Internal Revenue Service is investigating Petitioner for alleged failure to file income tax returns for the years 1964 through 1967.[18] Since tax returns must be filed by every individual who has more than $600 of gross income, regardless of whether any tax is owed, the Special Agents

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[17]At page 8 of its Brief, the Government argues that "there is no such thing as an investigation having a 'primary' criminal purpose," for many investigations do not produce recommendations to prosecute and most uncover large deficiencies. It is patently incorrect, however, to suggest that the *purpose for which an investigation is undertaken* can be determined by the *results* of the investigation. *cf. United States v. Dickerson*, 413 F. 2d 1111 (C.A. 7, 1969), discussed at p. 35 of Petitioner's Brief.

[18]*United States v. Mothe* (E.D. La., 1969), on appeal to the Fifth Circuit, Docket No. 28,640, involving one of the same Special Agents and Petitioner. Trial testimony of Special Agent Miller set forth in *Mothe* Appendix at p. 42, a copy of which has been filed with the Clerk of the Supreme Court.

investigating Petitioner do not have to make any of the determinations authorized by Section 7602.[19]

Disallowing Improper Use of Section 7602 Summonses Will Not Impede Intelligence Division Investigations

Special Agents have adequate means for conducting criminal investigations independent of Section 7602. Section 7608(b) specifically authorizes Special Agents to execute and serve search warrants.[20] Thus the legitimate need of the Internal Revenue Service to conduct civil investigations would not be frustrated by forbidding the use of Section 7602 for criminal investigations. Requiring the Service to employ different procedures for conducting criminal and civil investigations would comport with the Service's own internal policies of suspending all civil aspect until after criminal prosecution.[21] Recently the Government again reaffirmed that all civil claims are postponed pending a criminal trial. *United States v. Monsey*, 70-2 USTC 9578, at 84,416.

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[19]*United States v. Gorman*, 393 F. 2d 209, 213 (C.A. 7, 1968); and, *Lumetta v. United States*, 362 F. 2d 644, 647 (C.A. 8, 1966).

[20]Examples of the use of such authority are cited at p. 11, *supra*.

[21]Regulations of the Treasury Department explicity state that the normal civil procedures do not apply in any case in which criminal prosecution is under consideration. Reg. §601.105(g). *Campbell v. Eastland*, 307 F. 2d 478, 487 (CA 5, 1962), *cert. den.* 381 US 955 (1963).

United States v. Jaskiewicz, 278 F. Supp. 525, 536-537 (E.D. Pa. 1968). Quoting the Policy Manual of the Internal Revenue Service:

> • • • Experience has demonstrated that attempts to prosecute both the criminal and the civil aspects of a case concurrently may seriously militate against success with respect to either. • • • the imposition of criminal sanctions in the cases selected for prosecution

III.

Constitutional Doubts Require a Narrow Statutory Construction of Section 7602

Although Petitioner has not alleged a violation of his Fourth Amendment rights, serious Fourth Amendment questions are raised by *any* construction of Section 7602 under which Internal Revenue summonses could be used for the sole or principal purpose of investigating crime.

It is a familiar rule of this Court that, whenever there are alternative interpretations of a statute, and one of those alternatives would raise serious doubts as to the constitutionality of the statute as applied, the interpretation which avoids the constitutional issue will prevail. *Crowell v. Benson,* 285 U.S. 22, 62 (1932); *Ashwander v. TVA,* 297 U.S. 288, 348 (1936) (Brandeis, J. concurring).

The requirements for the issuance and enforcement of Internal Revenue summonses fail to meet Fourth Amendment standards for investigations conducted to discover or prove criminal conduct.[22] This Court's decisions in *Camara v. Municipal Court,* 387 U.S. 523 (1967), and

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should be considered paramount in relation to the civil tax aspects of the cases.

Accordingly, jeopardy and deficiency assessments will not be made, waivers and consents will not be requested, statutory notices of deficiency will not be issued *nor will any other action be taken with respect to the civil liability in cases in which a recommendation for criminal prosecution is likely* or has been made, if such action would imperil successful criminal investigation or prosecution.

(See Chapter 4500, P-4560-3, Approved 3/2/60) [Emphasis supplied].

[22]Section 7602 summonses are issued by the investigating agent, "the officer engaged in the often competitive enterprise of ferreting out crime," rather than a "neutral and detached magistrate." *Mancusi v. DeForte,* 392 U.S. 364, 371 (1968), quoting from *Johnson v. United States,* 333 U.S. 10, 14 (1948).

See v. City of Seattle, 387 U.S. 541 (1967), make it clear that the Amendment must be complied with even when a governmental agency conducts an administrative search which is *not* "personal in nature" or "aimed at the discovery of evidence of crime." 387 U.S. at 537.

The doctrine of *Crowell v. Benson,* requiring a statutory construction of Section 7602, not in violation of the Fourth Amendment, precludes the use of a summons for the sole or principal purpose of establishing a prosecutable criminal case.[23]

Although a summons issued pursuant to Section 7602 is not enforceable without the independent order of a court, this Court recognized long ago that:

> [T]he subpoena is in form an official command, and even though improvidently issued it has some coercive tendency, either because of ignorance of their rights on the part of those whom it purports to command or their natural respect for what appears to be an official command, or because of their reluctance to test the subpoena's validity by litigation. [*Cudahy Packing Co. v. Holland,* 315 US 357, 363-64 (1942)]

Even if the summoned person is sufficiently knowledgeable to insist upon court enforcement, it has generally been assumed that a showing of probable cause is not a prerequisite to enforcement of a section 7602 summons. *United States v. Powell,* 379 U.S. 48 (1964).

[23]This issue is fully discussed in *Kyriaco vs. United States,* No. 448, October Term, 1970, pp. 17-22. *Petition for Writ of Certiorari* pending, where Petitioner's fourth amendment rights are clearly in issue.

Conclusion

For the foregoing reasons and those stated in the Petitioner's Opening Brief, the judgments below should be reversed.

Respectfully submitted,

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Dated: October, 1970

Addendum

Title 26, U.S.C., Section 7608(b):

ENFORCEMENT OF LAWS RELATING TO INTERNAL REVENUE OTHER THAN SUBTITLE E.—

(1) Any criminal investigator of the Intelligence Division or of the Internal Security Division of the Internal Revenue Service whom the Secretary or his delegate charges with the duty of enforcing any of the criminal provisions of the internal revenue laws or any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary or his delegate is responsible is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) to execute and serve search warrants and arrest warrants, and serve subpeonas and summonses issued under authority of the United States;

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C) to make seizures of property subject to forfeiture under the internal revenue laws.

GS-1811-12
(Special Agent)
SPD No. 335
July 3, 1962

INTERNAL REVENUE SERVICE

Classification: Criminal Investigator, GS-1811-12
Organizational Title: Special Agent
Location: Intelligence Division

I. DUTIES AND RESPONSIBILITIES

Plans and conducts tax evasion investigations of greater than average complexity and importance, that is, those potentially with several of the following or equivalent characteristics:

Investigations typically concern one or more violators (usually highly successful professional or business men, frequently recognized leaders in their fields; or gamblers or racketeers of more than local notoriety with income from legitimate as well as illegitimate sources; or corporate entities having business operations outside the immediate locality with a large number of activities, operations, and transactions whose interrelationships are very difficult to establish).

Evidence is usually obtained through the interrogation of a large number of employees, business associates, and other persons throughout the area who have knowledge of the taxpayer's operations. Determination of tax evaded usually involves complex problems in reconstructing records from incomplete data or in analyzing and interpreting available records, or, in the absence of records, applying indirect accounting techniques such as the net worth method in income tax cases. In many cases proof of wilfulness on the part of any individual is very difficult to establish because of the concealed nature of the transactions and the involvement of numerous persons in unusual schemes of tax evasion. Extensive

investigation may be necessary also to counteract ingenious efforts by accountants or attorneys representing the suspected violator to interpose defenses or raise issues in attacking the Government's position.

Investigations are often conducted jointly with one or more Internal Revenue Agents or Revenue Officers; this imposes upon the Special Agent GS-12 difficult problems in proper planning and coordination of the work, determining the most appropriate method of procedure, sequence and timing of inquiries, etc. Occasionally other Special Agents will also be assigned to assist in such investigations.

Investigations of alleged violations may result in the discovery of additional violations and may require personal or written collateral inquiry into operations or transactions occurring elsewhere in the district, region, or in other regions.

Issues of substantial delicacy may arise in the course of the investigations, as, for example, where the principal sources of information are individuals or firms which are largely dependent upon the suspected violator for their principal sources of income; or where it becomes extremely difficult to avoid action which may result in undue and extensive damage to the business or professional reputation of individuals; or where situations develop which make it difficult to avoid the appearance of discriminating against certain individuals, particularly those holding or seeking public office or those of political prominence.

The nature and method of violation and the involvement of individuals of considerable prominence or notoriety within the area often result in cases achieving considerable attention by the press and other news media within the district.

In addition to work typified above, performs special duties including training new Special Agents and serving as acting Group Supervisor when designated. Per-

forms other related duties such as testifying as a Government witness, assisting the United States Attorneys during the preparation or trial of a case, or conducting collateral inquiries.

From time to time, is assigned to assist or otherwise perform work on cases at locations other than his official headquarters. Such work is of the difficulty and responsibility described in this standard position description.

II. SUPERVISION AND GUIDANCE RECEIVED

Work is usually under the very general supervision of a designated Intelligence supervisor who seldom issues instructions with assignments (except for making known specific information he may have) but who is available for general consultation and guidance.

Reports are given a general review to ensure that conclusions are sound and recommendations are supported by the evidence.

INTERNAL REVENUE SERVICE

SPD No. 226
January 6, 1960

Classification: Internal Revenue Agent GS-512-11
Organizational Title: Internal Revenue Agent
Location: District Audit Division Field Group

I. NATURE AND PURPOSE OF WORK: This is the position of a broadly qualified Internal Revenue Agent who conducts independent field examinations of a wide range of income tax returns or other audit investigations which can be expected to involve a general variety of tax law, accounting, or investigative problems.

Representative assignments include returns from individuals, partnerships, fiduciaries, and corporations re-

quiring the application of usual audit and investigative procedures in the review of business activities and records to determine correct tax liability. For example, some returns are of sizeable retail businesses such as automobile dealers, department stores, etc.; small manufacturing operations such as of apparel, furniture, jewelry, luggage, etc.; and varied retail and wholesale trade. In addition, other returns assigned may be from individuals reporting substantial to high income from one or more sources or presenting problems of family or business relationships affecting proper determination of tax liability.

Assignments may be expected to include from time to time other types of tax returns requiring similar field examination techniques or investigative inquiry. Makes other special investigations such as those pertaining to claims, offers-in-compromise, or collateral requests. As required, conducts investigations jointly with a Special Agent and completes audit portion, furnishes tax information assistance to the public, trains agents in lower grade, classifies returns, serves as administrative officer in charge, or performs other special duties. When designated holds informal conferences on cases from other examiners that did not result in agreement and taxpayer desires a further hearing. Discusses the case issues with the taxpayer and the examiner and seeks to compose differences where possible and arrive at a proper determination of the facts and application of pertinent provisions of laws and regulations. Prepares an informal conference report to explain action taken and to provide the basis for any necessary revision of the examiner's report.

II. SCOPE AND EFFECT: The work is usually of general variety and broad scope. There is the risk of significant error in some cases, but it is normally expected that issues will be brought into fairly good focus. Adjustments or tax changes proposed are important although varying in number, kind, and amount in given cases. Not infrequently, enforcement impact of work extends beyond the immediate taxpayer involved to other similar taxpayers and business associates through tendency of word to get around.

III. SUPERVISION: General supervision over work is exercised by the group supervisor who issues occasional instructions, reviews progress or general aspects of the work, and is available from time to time for consultation in unusual, unprecedented, or sensitive matters. Supervisory review of reports submitted is cursory, depending upon the time available for this purpose, and the need for ensuring that any special problems are recognized and considered. Final technical review of the case file is made by the Review Staff, and this is a comprehensive check on the full technical aspects involved.

IV. MENTAL DEMANDS: Determines the probable extent of examination or investigative inquiry necessary through study of the return, schedules and other information attached. Devises a general plan for the audit subject to revision after initiating contacts, and further study of preliminary findings from review of taxpayer records or investigative developments and from problems arising. Exercises alertness in detecting indications of fraud during the course of examinations. Problems or questions encountered and resolved independently largely on accounting, tax law, or other basis such as business practice, precedent, policy, etc., are varied and require a good knowledge of the code and regulations and of accounting and auditing procedures. Examples are general issues such as capitalization vs. expense treatment, reasonableness of deduction, business necessity for expenditure, basis in property, depreciation or depletion practices, method of accounting, reserves, interpretation of contracts, leases and similar business documents, and other features such as machine accounting, bankruptcy or receivership, closely held corporations, indications of inadequate records, and patents, royalties or copyrights.

V. CONTACTS: Initiates varied personal contacts with taxpayers and representatives, business associates, real estate agents, appraisers, bank officials, employees, etc., to obtain or verify information concerning operations, transactions, business records, etc., necessary for determining proper tax liability. Many of these contacts

are distinguished by the variety or complexity of issues, multiplicity of business transactions, or circumstances of business association or relationshp. A substantial number of the taxpayers contacted may be represented by tax counsel; others may be intimately familiar themselves with tax matters under discussion.

VI. QUALIFICATIONS: Good knowledge of accounting and auditing, tax law, and general investigative methods; ability to determine the most effective avenue in conducting field examinations of returns from many different individuals and businesses, and to solve most audit problems independently. Skill in the interpretation, discussion, and application of tax laws, regulations and court decisions. Ability to prepare complete and lucid reports of examinations completed.